City of St. Louis, 89 Mo. 208; *Twist v. City of Rochester,* 165 N. Y. 619 (affirming 37 App. Div. 307).

MUNICIPAL CORPORATIONS—USE OF STREETS—GRANT AND EXTENT OF RIGHTS.—GRAND TRUNK & W. RY. CO. v. CITY OF SOUTH BEND, 89 N. E. REP. 885 (IND.).—*Held,* that an ordinance permitting the use of streets upon certain conditions is not a purely private contract when accepted, and becomes a binding contract only so far as it affects business interests or administrative functions of the city, but is not binding upon it to the extent that it surrenders its police powers.

A franchise given to a railroad to operate its road in the streets of a city is derived from the legislature, through the charter of the city, and not from the municipal corporation, though its consent may be required, and the latter has no power to revoke. *Africa v. Board,* 70 Fed. 729. This grant by the state through the consent of the municipal corporation, when accepted by the company, gives the latter a legal and contractual right in the franchise, which under the Constitution of the United States is irrevocable and inviolable. *Hazen v. Bank,* 1 Sneed, 115. And the only method by which such a franchise may be revoked or altered is by a legislative enactment of a statute authorizing it. *Africa v. Board,* 70 Fed. 729; *Elizabethtown Gas Light Co. v. Green,* 46 N. J. Eq. 118. However, contrary to this, it has been held that a city council is merely a trustee for not only the city but for the whole people of the state. *Logansport Ry. Co. v. City of Logansport,* 114 Fed. 688. And by a franchise to a company, the city does not bargain away its right under police power to protect public health, morals and safety. *City of Indianapolis v. Consumers' Gas Trust Company,* 140 Ind. 107. This right to exercise such police power on the part of the city is a continuing right. *Indiana Ry. Co. v. Calvert,* 168 Ind. 321. And such regulations may be made by the city council although they will cause expense to the company; and the company will not be entitled to reimbursement. *In re Deering,* 93 N. Y. 361. But in all cases the regulations must be reasonable. *Appeal of Pittsburg,* 115 Pa. 4. In *Baltimore Co. v. Baltimore,* 166 U. S. 673, it was held that where a franchise to lay a double track had been given, it was not an unreasonable exercise of police power to restrict the company to only one track. Also it has been held that where an ordinance has authorized the laying of one track and the company has not availed itself of this power with respect to one certain street, the forbidding of the laying of that one track in that particular street was not an unreasonable regulation under exercise of police power, because the city council is a trustee for the public and cannot abridge their legislative power. *Snouffer v. Chicago Co.,* 118 Iowa, 287.

NUISANCE—POLLUTION OF WATERS—PRESCRIPTIVE RIGHTS.—WEEKS-THORN PAPER CO. V. GLENSIDE WOOLEN MILLS, 118 N. Y. SUPP. 1027.—*Held,* that where the very act declared illegal by Pen. Code, Sect. 390, prohibiting the discharge of any noxious, offensive, or poisonous substances into public waters or streams running into such waters, is the act that damages plaintiff, no continuance thereof could create a prescriptive right.

A public nuisance is one that obstructs the public in the enjoyment of a common right or that injuriously affects the community at large, or some considerable portion of it. Whereas a private nuisance is one which obstructs a person in the enjoyment of a private right or which affects one or more as private citizens and as part of the public. *Cooley on Torts,* Sect. 291. It has been held that the rule that a right to maintain a nuisance cannot be acquired by prescription applies only to public and not to private nuisances. *Drew v. Hicks,* 35 Pac. 563 (Cal.). But it was held that if an individual is injured by a public nuisance, it is regarded as a private nuisance, also, for the reason that being a public nuisance from its inception, it is unlawful and can never become lawful by any length of exercise against an individual. *Rhodes v. Whitehead, 27* Tex. 304; *Woodruff v. North Bloomfield Gravel Min. Co.,* 18 Fed. 753. And this is the doctrine which is supported by authority and is recognized in the courts of this country. *Wood Nuis.* 792. Nor does it make any difference that the business was carried on in a reasonable and prudent manner and that nothing was done which was not a reasonable and necessary incident of the business. It still is subject to abatement. *People v. Detroit White Lead Works,* 82 Mich. 471. But the rule seems to be that in order to be abated by the act or at the suit of a private party, some private and special injury must be shown. *Walker v. Shepardson,* 2 Wis. 384. However, against the weight of authority it has been held that when a public nuisance has been continuous, exclusive, known to and acquiesced in by the owner of rights affected thereby, and the use has been extended twenty years or more, the prescription becomes absolute. *Perley v. Hilton,* 55 N. H. 444; 1 *Wood Nuis.* 418-419. And in *Borden v. Vincent,* 24 Pick. 301, although the court did not decide whether the nuisance was public or private, the facts seemed to show that it was a public nuisance, and the prescription was held to have been acquired by the defendant.

TIME—JUDICIAL DAYS.—PEEBLES V. CHARLESTON & W. C. RY. CO., 66 S. E. 953 (GA.).—*Held,* that the general rule that a day in law is an indivisible point, and that fractions thereof will not be regarded in the computation of time, is not applicable where the exact time is necessary to the existence of a right, and cannot be invoked to prevent an abatement of a suit *ex delicto* filed in the name of the plaintiff who, at the exact hour of filing, had been dead for three hours.

The doctrine that in law there is no fraction of a day is a legal fiction and is true only in respect to cases where it will promote right and justice. *Matter of Richardson,* 2 Story (U. S.), 571. It is never adhered to whenever it would work mischief or injustice, or where the time is important or material, or where it becomes necessary to inquire into the exact hour or minute of the day to settle conflicting claims. *Louisville v. Savings Bank,* 104 U. S. 469; *Levy v. Chicago Nat. Bank,* 158 Ill. 88. Hence where time is material to a contract the exact hour of performance may be shown. *Grosvenor v. Magill,* 37 Ill. 239. And in order to show priority of liens or conveyances the law will take notice of fractions of a day and will inquire into the precise time when a